

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ERIC MARTIN,

Petitioner,

Case No. 2:10-cv-148

v.

Honorable R. Allan Edgar

PATRICIA CARUSO,

Respondent.

_____ /

OPINION

This purports to be habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2241. Promptly after the filing of a petition for habeas corpus, the Court must undertake a preliminary review of the petition to determine whether “it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” Rule 4, RULES GOVERNING § 2254 CASES; *see* 28 U.S.C. § 2243. If so, the petition must be summarily dismissed. Rule 4; *see Allen v. Perini*, 424 F.2d 134, 141 (6th Cir. 1970) (district court has the duty to “screen out” petitions that lack merit on their face). A dismissal under Rule 4 includes those petitions which raise legally frivolous claims, as well as those containing factual allegations that are palpably incredible or false. *Carson v. Burke*, 178 F.3d 434, 436-37 (6th Cir. 1999). After undertaking the review required by Rule 4, the Court concludes that the petition must be dismissed because it does not seek relief cognizable on habeas review.

Factual Allegations

Petitioner Eric Martin presently is incarcerated with the Michigan Department of Corrections (MDOC) and housed at the Baraga Maximum Correctional Facility. He is serving multiple terms of incarceration for six different convictions, which occurred in 1994, 1995 and 2004.

Petitioner does not challenge the fact of his convictions, nor does he challenge the duration of his sentences. Instead he alleges that his Eighth Amendment rights have been violated by the conditions of his confinement. (Pet., Page ID #4, docket #1.) Petitioner claims that, while housed with the MDOC, his life has been threatened and he has been subjected to assassination attempts. (Pet., Page ID #2-4.) He further alleges that he has been given food poisoned with HIV or AIDS-positive blood. For relief, he seeks to be released from MDOC custody.

Discussion

Petitioner filed his application for habeas relief under 28 U.S.C. § 2241. Section 2241 authorizes district courts to issue a writ of habeas corpus to a state or federal prisoner who is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2241(c)(3). Where a prisoner is challenging the very fact or duration of his physical imprisonment and the relief that he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a petition for writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). However, habeas corpus is not available to prisoners who are complaining only of the conditions of their confinement or mistreatment during their legal incarceration. *See Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004); *Lutz v. Hemingway*, 476 F. Supp. 2d 715, 718 (E.D. Mich. 2007). Complaints like the ones raised by Petitioner, which involve conditions of confinement, “do not relate to the legality of the petitioner’s

confinement, nor do they relate to the legal sufficiency of the criminal court proceedings which resulted in the incarceration of the petitioner.” *Lutz*, 476 F. Supp. 2d at 718 (quoting *Maddux v. Rose*, 483 F. Supp. 661, 672 (E.D. Tenn. 1980)). Petitioner’s claims, therefore, “fall outside of the cognizable core of habeas corpus relief.” *Hodges v. Bell*, 170 F. App’x 389, 393 (6th Cir. 2006).

An inmate like Petitioner may, however, bring claims that challenge the conditions of confinement under 42 U.S.C. § 1983. *Lutz*, 476 F. Supp. 2d at 718 (citing *Austin v. Bell*, 927 F. Supp. 1058, 1066 (M.D. Tenn. 1996)). The Court notes that Petitioner is barred from proceeding *in forma pauperis* in a civil rights lawsuit under 42 U.S.C. § 1983. The Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, 110 Stat. 1321 (1996), which was enacted on April 26, 1996, amended the procedural rules governing a prisoner’s request for the privilege of proceeding *in forma pauperis*. The “three-strikes” provision of the PLRA prevents a prisoner from proceeding *in forma pauperis* when the prisoner “has on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Petitioner has received strikes in four cases. *See Martin v. Kleinhardt*, No. 2:08-cv-227 (W.D. Mich. Feb. 26, 2009); *Martin v. Caruso*, No. 2:07-cv-183 (W.D. Mich., Jan. 5, 2009); *Martin v. Koljonen, et al.*, No. 2:03-cv-143 (W.D. Mich., Aug. 11, 2003); *Martin v. Martin*, No. 2:01-cv-181 (W.D. Mich., Apr. 29, 2002). Moreover, Petitioner has filed at least two civil rights lawsuits where he was not permitted to proceed *in forma pauperis* because he had three strikes. *See Martin v. Hofbauer*, No. 2:10-cv-274 (W.D. Mich. June 4, 2010); *Martin v. Talio et al.*, No. 2:10-cv-9 (W.D. Mich. July 7,

2010). The Court will not allow Petitioner to circumvent the three-strikes provision by filing an improper habeas corpus action.

Further, although *pro se* litigants are treated to less stringent pleading formalities, courts still require such litigants to meet basic pleading standards. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989). “Arguably, hanging the legal hat on the correct peg is such a standard, and “[l]iberal construction does not require a court to conjure allegations on a litigant’s behalf.” *Martin*, 391 F.3d at 714 (quoting *Erwin v. Edwards*, 22 F. App’x 579, 580 (6th Cir. 2001) (dismissing a § 1983 suit brought as a § 2254 petition)). The Sixth Circuit has held that where, as here, the claims about the conditions of confinement are not cognizable in an action under § 2241, the district court must dismiss the habeas action without prejudice to allow the petitioner to raise his potential civil rights claims properly in a § 1983 action. *Martin*, 391 F.3d at 714.

Conclusion

In light of the foregoing, the Court will summarily dismiss Petitioner’s application without prejudice pursuant to Rule 4 because it does not seek relief cognizable on habeas review.

Certificate of Appealability

Under 28 U.S.C. § 2253(c)(2), the Court must determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a “substantial showing of a denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This Court’s dismissal of Petitioner’s action under Rule 4 of the Rules Governing § 2254 Cases is a determination that the habeas action, on its face, lacks sufficient merit to warrant service. It would be highly unlikely for this Court to grant a certificate, thus indicating to the Sixth Circuit Court of Appeals that an issue merits review, when the Court has already determined that the action is so lacking in merit

that service is not warranted. *See Love v. Butler*, 952 F.2d 10 (1st Cir. 1991) (it is “somewhat anomalous” for the court to summarily dismiss under Rule 4 and grant a certificate); *Hendricks v. Vasquez*, 908 F.2d 490 (9th Cir. 1990) (requiring reversal where court summarily dismissed under Rule 4 but granted certificate); *Dory v. Comm’r of Corr. of the State of New York*, 865 F.2d 44, 46 (2d Cir. 1989) (it was “intrinsically contradictory” to grant a certificate when habeas action does not warrant service under Rule 4); *Williams v. Kullman*, 722 F.2d 1048, 1050 n.1 (2d Cir. 1983) (issuing certificate would be inconsistent with a summary dismissal).

The Sixth Circuit Court of Appeals has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466 (6th Cir. 2001). Rather, the district court must “engage in a reasoned assessment of each claim” to determine whether a certificate is warranted. *Id.* at 467. Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473 (2000). *Murphy*, 263 F.3d at 467. Consequently, this Court has examined each of Petitioner’s claims under the *Slack* standard. Under *Slack*, 529 U.S. at 484, to warrant a grant of the certificate, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* “A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying this standard, the Court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of Petitioner’s claims. *Id.*

The Court finds that reasonable jurists could not conclude that this Court’s dismissal of Petitioner’s claims was debatable or wrong. Therefore, the Court will deny Petitioner a certificate of appealability.

A Judgment and Order consistent with this Opinion will be entered.

Dated: 8/23/2003

/s/ R. Allan Edgar
R. Allan Edgar
United States District Judge